

By: Chisum

H.B. No. 4132

A BILL TO BE ENTITLED

AN ACT

relating to the establishment and administration of the Texas Essential Workers Program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 312 to read as follows:

CHAPTER 312. TEXAS ESSENTIAL WORKERS PROGRAM

Sec. 312.001. PURPOSE. The purpose of this chapter is to develop and establish, in collaboration with the federal government, a Texas Essential Workers Program to provide an adequate, legal, and stable workforce for employers in this state who are experiencing a critical shortage in the availability of qualified workers, particularly in the industries of ranching, farming, dairy, food manufacturing, construction, landscaping, and restaurant and hotel services. The enactment of this chapter represents an effort to:

(1) recognize the need for additional workers in workforce shortage industries in this state;

(2) eliminate the exploitation of undocumented workers in this state;

(3) ensure the payment of taxes by all employers and employees in this state;

(4) increase national security in and the fiscal resources of this state; and

1 (5) improve the overall economy of this state.

2 Sec. 312.002. DEFINITIONS. In this chapter:

3 (1) "Department" means the Department of Public Safety
4 of the State of Texas.

5 (2) "Eligible employer" means a person who:

6 (A) employs one or more employees in a workforce
7 shortage industry in this state; and

8 (B) for a period of at least 30 days has been
9 unable to find a sufficient number of qualified workers who are
10 authorized to be employed in the United States to meet the
11 employer's workforce needs.

12 (3) "Foreign worker" means a person who is approved by
13 the commission as eligible to provide labor to a participating
14 eligible employer under the program.

15 (4) "Program" means the Texas Essential Workers
16 Program established under this chapter.

17 (5) "Workforce shortage industry" means the
18 agriculture and dairy industries and other industries in this state
19 designated by the commission under this chapter as experiencing a
20 critical shortage in the availability of workers.

21 Sec. 312.003. RULES. The commission shall adopt rules
22 necessary to administer this chapter.

23 Sec. 312.004. PROGRAM ESTABLISHMENT AND ADMINISTRATION.

24 (a) The commission shall establish and administer the Texas
25 Essential Workers Program to enable participating eligible
26 employers to employ qualified foreign workers. In establishing the
27 program, the commission shall conduct outreach to and solicit

1 information from employers in this state to determine:

2 (1) which industries should be designated as workforce
3 shortage industries under this chapter; and

4 (2) the number of foreign workers that would be
5 sufficient to meet the workforce needs of employers in those
6 industries.

7 (b) Based on the commission's findings under Subsection
8 (a), the commission shall petition the federal government for the
9 temporary admission into this country under H2-A and H2-B visas of a
10 sufficient number of foreign workers to meet the workforce needs of
11 eligible employers in this state.

12 (c) As a part of the program, the commission shall:

13 (1) establish a system for the recruitment and
14 referral of local workers for available workforce shortage industry
15 jobs in this state; and

16 (2) require participating eligible employers to
17 attempt to hire employees using that system before hiring foreign
18 workers.

19 (d) To the extent permitted by federal law, the commission,
20 the governor, and the secretary of state may jointly enter into
21 agreements between this state and foreign countries to facilitate
22 the recruitment and selection of eligible foreign workers for
23 participation in the program and the approval for participation in
24 the program of the workers by participating eligible employers.
25 The commission shall:

26 (1) prescribe eligibility criteria for any person
27 recruiting foreign workers under the program; and

1 (2) maintain a list of recruiters approved by the
2 commission as satisfying that criteria.

3 Sec. 312.005. REQUIREMENTS FOR PARTICIPATING ELIGIBLE
4 EMPLOYERS. (a) To participate in the program, an eligible employer
5 must:

6 (1) submit to the commission:

7 (A) an application, in the form and manner
8 prescribed by the commission; and

9 (B) a signed, sworn affidavit attesting that
10 during the 30-day period immediately preceding the date of the
11 employer's application, the employer was unable to find a
12 sufficient number of qualified workers authorized to work in the
13 United States to meet the employer's workforce needs; and

14 (2) pay a fee in the amount prescribed by the
15 commission.

16 (b) The application prescribed by the commission under
17 Subsection (a) must require the employer to provide:

18 (1) the employer's name, address, federal income tax
19 identification number, and industry;

20 (2) a detailed description of:

21 (A) the workforce shortage the employer is
22 experiencing; and

23 (B) the measures the employer has taken to
24 identify and recruit local workers equipped with the skills
25 necessary to meet the employer's workforce needs; and

26 (3) any other information the commission considers
27 appropriate.

1 (c) The commission shall review an employer's application
2 and, not later than the 30th day after the date the commission
3 receives the application, notify the employer regarding whether the
4 commission has approved the employer's application for
5 participation in the program.

6 (d) On receipt of notice from the commission that the
7 commission has approved the employer's application, a
8 participating eligible employer, subject to any limitations or
9 requirements prescribed by this chapter or rules adopted under this
10 chapter, may:

11 (1) recruit foreign workers at any United States
12 consulate; and

13 (2) enter into employment contracts for the temporary
14 employment of foreign workers.

15 (e) An employment contract between a participating eligible
16 employer and a foreign worker must provide that the worker will be
17 employed for at least three-fourths of each work day during the
18 contract period.

19 (f) Each participating employer who employs a foreign
20 worker under the program shall:

21 (1) provide the worker a copy of the employment
22 contract between the employer and the worker in the worker's native
23 language;

24 (2) pay the worker at least twice each month;

25 (3) pay wages to the worker that are in compliance with
26 the federal Immigration Reform and Control Act of 1986 (8 U.S.C.
27 Section 1101 et seq.);

1 (4) provide to the worker, without charge:

2 (A) housing that meets safety and health
3 standards established by federal law;

4 (B) transportation between the worker's local
5 housing and the worksite;

6 (C) workers' compensation coverage; and

7 (D) all tools, supplies, and equipment required
8 to perform the worker's assigned duties;

9 (5) provide to the worker:

10 (A) three low-cost meals each day, the cost of
11 which must be disclosed in the worker's employment contract; or

12 (B) free cooking and kitchen facilities;

13 (6) make available to the worker English as a second
14 language classes;

15 (7) after the expiration of half of the worker's
16 employment contract period, promptly reimburse the worker for any
17 costs incurred by the worker for transportation and subsistence
18 from the site of recruitment to the employer's place of employment;

19 (8) after the expiration of the worker's employment
20 contract, promptly pay for the costs of return transportation and
21 subsistence to the site of the worker's recruitment; and

22 (9) provide any other employees of the employer who
23 perform the same job as the foreign worker with the same benefits,
24 wages, and working conditions as the employer provides the foreign
25 worker.

26 (g) The commission may inspect housing described by
27 Subsection (f)(4)(A).

1 Sec. 312.006. FOREIGN WORKER APPLICATION. The commission
2 shall prescribe the form and content of an application to be used by
3 any person seeking to participate in the program as a foreign
4 worker. The application must require the applicant to provide the
5 applicant's name, photograph, fingerprints, and any other
6 information the commission considers appropriate.

7 Sec. 312.007. PARTICIPATION REQUIREMENTS FOR FOREIGN
8 WORKER. (a) To be eligible to participate in the program as a
9 foreign worker, a person must:

10 (1) complete a foreign worker application at the
11 United States consulate in the person's country of origin;

12 (2) be approved by the commission after passing:

13 (A) a criminal history record information check
14 conducted by the appropriate authorities in the person's country of
15 origin; and

16 (B) a federal and state criminal history record
17 information check conducted by the department under Section
18 312.009; and

19 (3) have been issued a current H2-A or H2-B visa.

20 (b) For purposes of Subsection (a)(2)(A), the employer
21 seeking to hire the person must obtain a copy of the results of the
22 criminal history record information check conducted by the
23 appropriate authorities in the person's country of origin and
24 submit the results to the commission. The employer shall pay any
25 fee charged for obtaining that information.

26 (c) A person may not participate in the program as a foreign
27 worker if the person has been convicted of:

1 (1) any crime in the United States; or

2 (2) a crime in the foreign worker's country of origin
3 that would have been classified as a Class A misdemeanor or a felony
4 in this state.

5 (d) A participating foreign worker may not file for or
6 receive unemployment insurance benefits.

7 Sec. 312.008. FOREIGN WORKER FAMILY MEMBERS. (a) A family
8 member of a foreign worker may participate in the program only if
9 the family member meets the requirements of Section 312.007.

10 (b) A foreign worker may not transport a family member into
11 this state unless the family member has proper federal
12 authorization.

13 Sec. 312.009. CRIMINAL HISTORY RECORD INFORMATION CHECK.
14 The department shall conduct a state and federal criminal history
15 record information check to determine the eligibility of each
16 person who applies to participate in the program as a foreign
17 worker. The employer seeking to employ the person shall be charged
18 a fee for the criminal history record information check.

19 Sec. 312.010. ISSUANCE OF TEMPORARY WORKER LEGAL
20 IDENTIFICATION CARDS TO FOREIGN WORKERS BY DEPARTMENT. (a) The
21 department shall issue to each foreign worker a temporary worker
22 legal identification card under this section. The identification
23 card must:

24 (1) be non-forgable;

25 (2) indicate the date on which the foreign worker's
26 authorized presence in this state expires; and

27 (3) meet any other requirements prescribed by federal

1 law.

2 (b) The department shall prescribe the fee for the issuance
3 of an identification card under this section. The fee shall be paid
4 by the participating eligible employer who employs the foreign
5 worker.

6 (c) The identification card shall be issued to the
7 participating eligible employer employing the foreign worker who
8 shall then provide the card to the foreign worker. A
9 participating employer shall return the identification card to the
10 department as soon as practicable after:

11 (1) the date the foreign worker's approved presence in
12 this state expires; or

13 (2) the date the employer revokes the identification
14 card from the worker under Subsection (d).

15 (d) A participating eligible employer shall revoke the
16 identification card of a foreign worker employed by the employer
17 if:

18 (1) the foreign worker is absent from work without
19 approval for more than 13 consecutive days;

20 (2) the employer is unable to locate the foreign
21 worker for more than six days;

22 (3) the employer determines that the foreign worker
23 has traveled outside of this state;

24 (4) the foreign worker is convicted of a crime in this
25 state;

26 (5) the foreign worker is no longer employed by the
27 employer; or

1 (6) the foreign worker gives, sells, or lends the
2 worker's identification card to another person for the purpose of
3 obtaining employment.

4 (e) A participating eligible employer who fails to return an
5 identification card to the department as required by Subsection (c)
6 is ineligible to participate in the program.

7 (f) The department shall maintain a database of foreign
8 workers to whom the department has issued an identification card
9 under this section.

10 (g) Any essential documents provided to a foreign worker by
11 the department must be provided in the foreign worker's native
12 language.

13 (h) An identification card issued under this section is
14 valid for two years. The department shall adopt a procedure for the
15 renewal of an identification card issued under this section.

16 (i) The department, in consultation with the commission,
17 shall adopt rules for the administration of this section.

18 SECTION 2. (a) The Texas Workforce Commission and
19 Department of Public Safety of the State of Texas may implement
20 Chapter 312, Labor Code, as added by this Act, only if the federal
21 government authorizes this state to implement an essential workers
22 program or similar program.

23 (b) If the federal government authorizes this state to
24 implement an essential workers program or similar program, the
25 Texas Workforce Commission and Department of Public Safety of the
26 State of Texas, as soon as practicable after the date the program is
27 authorized, shall adopt rules for the administration of Chapter

1 312, Labor Code, as added by this Act.

2 (c) The attorney general shall monitor federal legislation
3 for the purposes of this section.

4 SECTION 3. This Act takes effect September 1, 2009.